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December 29, 1992

Honorable Dan Morales
Attorney General of Texas
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Opinion Committee
ack 1-7-93

Dear General Morales:

Pursuant to the provisions of Section 402.043 of the Texas Government Code, I hereby request an opinion from the Attorney General with regard to the following questions which have arisen in El Paso County, Texas.

QUESTIONS PRESENTED

1. Is the term of office of Directors of El Paso County Water Control and Improvement District--Westway (hereinafter referred to as "Westway.") two years or four years?
2. If their term of office is two years, what is the legal status of the district and its directors and the legal status of the actions taken by the board of directors who have been serving for four year terms?

3. What is the proper election date for directors of Westway?

DISCUSSION

The El Paso County Water Control and Improvement District--Westway (Westway) was created on May 24, 1961, pursuant to Constitution, Article XVI, §59, by legislative act (formerly Art. 8280-250, V.T.C.S., but since repealed and not carried into the Water Code), General and Special Laws of Texas, 1961, Chapter 210. The legislature subsequently passed an act ratifying, confirming and validating Westway effective February 16, 1962 (General and Special Laws of Texas, 1962, 3d Called Session, Chapter 67).

Section 6 of the Act creating Westway provided, inter alia, that the members of the board of directors would serve for two year staggered terms, with elections being held each year beginning in 1962. It also provided that elections for the election of Directors would be held on the second Tuesday in January. However, Chapters 50, 51, 53, 54, 55, 56, 57, 58, 61, and 63 of the Texas Water Code were amended to change the term of the directors of certain general law districts from two to four years, effective January 1, 1984 (Acts 1983, 68th Leg., p. 5212, Ch. 951), and Westway (which is a "water control and improvement district" operating under and governed by Chapter 51 of the Water Code) began to elect its directors for four year terms, in accordance with this change in the law affecting general law water districts created under Article XVI, §59, of the Texas Constitution. Westway also began to hold its election for directors on the first Saturday in April, as provided in §51.0731, Water Code, apparently on the basis that they are a district providing water or sewer services to household users as their principal function. However, in 1987 Chapter 51 of the Water Code was amended by adding §51.0732 to provide that notwithstanding the election date prescribed by §51.0731, an election

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held under that section shall be held on a uniform election date provided by law. (Acts 1987, 70th Leg., ch. 54, §25(l), eff. Sept. 1, 1987.) Subsequently, the minutes of the Westway directors' meeting for March 17, 1988, (copy attached as Exhibit A) reflect that they voted to change the district's election dates from the first Saturday in April to the first Saturday in May "...henceforth in compliance with election laws."

Therefore, a board of directors election and a bond election were held on May 7, 1988, and directors' elections have been held on the first Saturday in May since that time. A letter from attorneys to the president of Westway, advising him regarding these elections (attached as Exhibit B), makes it apparent that they were being held in accordance with Chapter 51, Water Code.

Now a local group is challenging Westway's action in electing directors for four year terms, contending that the amendment to the Water Code changing the terms of office does not apply to Westway. Their argument is based on a proviso in § 4 of the Act creating Westway which provides as follows:

"Sec. 4. The District shall have and exercise, and is hereby vested with all of the rights, powers, privileges, authority and duties conferred and imposed by the General Laws of this state now in force or hereafter enacted, applicable to water control and improvement districts created under authority of Section 59, Article XVI, of the Constitution, but to the extent that the provisions of any such General Laws may be in conflict or inconsistent with the provisions of this Act, the provisions of this Act shall prevail." (General & Special Laws of Texas, 1961, 57th Reg. Sess. p. 431,435, Ch. 210, emphasis added. For convenience, a copy of pertinent portions of this act is attached as Exhibit C.)

However, if this proviso prevented the terms of office for directors from being changed, it

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would mean also that the election date for directors of Westway would have to be held on the second Tuesday of each January rather than on a uniform election day as is mandated for virtually every other state entity, to include water control and improvement districts. Construing the language in § 4 to restrict the change in election dates and in terms of office for directors would be contrary to the strong public policies in favor of increasing efficiency and reducing the cost burden on taxpayers by holding elections on a uniform election day and holding elections for district, precinct, and county officeholders only every four years. The strong public policy in favor of four year terms for these office holders is reflected in Article XVI, § 64 of the Texas Constitution. We are aware that there is a 1962 Attorney General Opinion (No. WW-1110A (1962)) to the effect that § 64 applies only to those officials listed in Article XVI, § 65, but in view of the many subsequent legislative enactments increasing the terms of office for directors of various districts, it would appear that WW-1110A should be re-examined, and that Article XVI, § 64 should be held to apply to all district, precinct, and county elected officials, to include the directors of Westway.

If you should render an opinion that the proper term of office for directors of Westway is two years, in view of the fact that for the past nine years Westway has elected them for terms of four years, the question is raised as to the legal status of these directors, the legal status of Westway itself, and the legal status of actions taken by the various directors who held their offices beyond a two year term.

These questions appear to be answered by language contained in § 6 of the organic statute, which provides in pertinent part as follows:

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"Failure to call an election for Directors will in no way affect the legal status of the District, or the Board of Directors or the individual Directors or the right of said Board of Directors to act or function and the Directors shall serve until an election is held under the provisions of this law and the succeeding Directors have been duly elected or appointed and have duly qualified." (General & Special Laws of Texas, 1961, 57th Reg. Sess. p. 431, 435, Ch. 210, emphasis added.)

Based on this language, the failure to call the elections for two year terms would not appear to affect the legal status of the district, its directors, or the actions taken by the directors when they were serving beyond the times that elections should have been held.

An opinion is requested on the questions presented at your earliest convenience.

Very truly yours,



JOSEPH R. LUCAS
El Paso County Attorney

Encl: as